FILED

NO. (Y) 98 480 SEP 17 1998

OFFICE OF THE CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1998

COMM-CARE CORPORATION
Petitioner,

v.

LOUISIANA TAX COMMISSION, et al.
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
FOR THE STATE OF LOUISIANA

APPENDIX

JOHN A. STASSI II (La. Bar No. 12412)*
CHRISTOVICH & KEARNEY, L.L.P.
Suite 2300
Pan American Life Center
601 Poydras Street
New Orleans, Louisiana 70130-6078
ATTORNEY FOR PETITIONER
**Counsel of Record*

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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APPENDIX 1

LOUISIANA TAX COMMISSION
STATE OF LOUISIANA

IN RE:	:	LTC DOCKET NO.: 95-009,
	:	95-010, 95-011, 95-012 A-B,
	:	95-013, 95-014, 95-015, 95-028
COMM-CARE CORP.	:	A-B, 95-029

FINDINGS OF FACT AND REASONS FOR DECISION

This matter came to be heard on the 7th day of December, 1995 and was continued on the 18th day of December, 1995, at Baton Rouge, Louisiana. This hearing was at the request of Comm-Care Corporation, for determining its request for exemption of ad valorem taxes. Paul West and John Stassi, attorneys, represented Comm-Care Corporation. Also present, were Carmon Walker, Catahoula Parish Assessor Bobby Cudd, Beauregard Parish Chief-Deputy Assessor; and Eugene Cavanaugh, Vernon Parish Assessor.

The properties being appealed are ten(10) extended-care facilities, namely: D'Ville House in Ascension Parish, Oak Haven and Bayou Vista in Avoyelles Parish, Beauregard Nursing Home in Beauregard Parish, Columns in Catahoula Parish, Baker Manor in East Baton Rouge Parish, Towne Oaks in Lincoln Parish, Ridgecrest in Ouachita Parish, Tioga Manor in Rapides Parish and Kurthwood Manor in Vernon Parish. Comm-Care acquired the ten (10) extended-care facilities on March 1, 1994.

Exhibits were offered into evidence by the Assessor and the taxpayer.

The taxpayer is asking for the properties to be declared exempt; and notes, "If the exemption is denied, taxpayer does not contest the assessors' 1995 valuations."

Comm-Care Corporation contends that they are a non-profit corporation operated for health and welfare purposes, exempt from federal and state income taxation as required in the 1974 Constitution Article 7, Section 21(B)(1)(a).

Article 7 § 21(B)(1)(a) states:

> Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places or burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which insure to the benefit of any private shareholder or member thereof and which is declared to exempt from federal or state income tax;

The taxpayer argues that the ten (10) extended-care facilities should be placed on the exempt rolls effective March 1, 1994. They further argue that under the 1974 Constitution the court in *Hotel Dieu* determined that "the presence of 'health purposes' " would grant the exemption to a non-profit corporation whose sole function is to operate a nursing home. They further argue that under the 1974 Constitution, health care is a charitable purpose, thus their nursing facilities should be exempt from ad valorem tax and must be placed on the exempt rolls as of the date of purchase.

The assessors argue that the nursing homes were operated in the same manner as any "for-profit" organization would operate. They further argue that there was very little charitable activity by Comm-Care Corporation. They strongly feel that these nursing homes should not be tax exempt because of the above stated reasons.

The Commission finds that Comm-Care Corporation is a non-profit corporation operated for health and welfare purposes, exempt from federal and state income taxation as required in the 1974 Constitution Article VII, Section 21(B)(1)(a). The Commission further finds that after reviewing all the evidence presented by the parties in the proceeding, that Comm-Care was not operating the nursing homes in a "charitable" manner. The Commission further finds that the nursing homes appear to be operated in the same manner as any "for-profit" organization would operate.

Applying its experience, technical competence and specialized knowledge, and based upon the evidence and testimony in records, the Louisiana Tax Commission 1qAzfinds that the property is not exempt from ad valorem taxation.

Thus done and signed at Baton Rouge, Louisiana this *13th* day of *February,* 1996.

/s/ Malcolm B. Price, Jr.
Malcolm B. Price, Jr., Chairman

/s/ Valery A. Lowery
Valery A. Lowery, Member

/s/ Kenneth P. Naquia, Jr.

Kenneth P. Naquia, Jr., Member

A TRUE COPY OF A DOCUMENT IN
OUR FILES THIS *13th*
DAY OF *February,* 1996

/s/ Ann R. Laurence

EXECUTIVE SECRETARY

APPENDIX 2

COMM-CARE CORPORATION	*	NO. 425,365 - DIVISION M
	*	19TH JUDICIAL DISTRICT COURT
VERSUS,		
	*	PARISH OF EAST BATON ROUGE
LOUISIANA TAX COMMISSION	*	STATE OF LOUISIANA

* *

WRITTEN REASONS FOR JUDGMENT

This matter is before the Court on Exceptions of No. Cause of Action and Prescription filed by the assessor defendants.

Plaintiff, Comm-Care Corporation, brings this petition for judicial review of a decision of the Louisiana Tax Commission rendered February 13, 1996. As the petition states, this request for judicial review is made pursuant to La. R.S. 47:1998
A. (1).

With respect to the exception of no cause of action, the defendants contend the petition fails to state that the 1995 taxes have been paid at all, much less by the December 31,

1995 deadline set forth in La. R.S. 47:2101 for payment of ad valorem taxes. The parties have agreed in arguments before the Court that the taxes at issue (1995 ad valorem taxes) were paid under protest on February 13, 1996. That stipulation is relevant and admissible with respect to the prescription exception but not on the exception of no cause of action on which no evidence is admissible.

PRESCRIPTION

The petition alleges that petitioner followed the administrative procedures set out in La. R.S. 47:1992 by for complaint to the local board of review challenging the assessments, then appeal to the Louisiana Tax Commission. La. R.S. 47:1998 permits suits by taxpayers "dissatisfied with the action of the tax commission under the provisions of R.S. 47:1989," which suit must be instituted "within thirty days of the decision of the tax commission," which plaintiff has here done. The tax commission decision is dated February 13, 1996. The lawsuit was filed on February 27, 1996, within the thirty days. (See La. R.S. 47:1998 A(1))

The statute further provides, however, that "Any taxpayer who has filed suit under this provision and whose taxes have become due shall pay such taxes under protest . . . ." (See La. R.S. 47:1998 A (2))

The question then becomes whether or not this taxpayer's failure to pay its taxes on or before the due date of December 31, 1995, operates as a bar to its suit for judicial review of the tax commission decision. Exceptors contend that the right to pay under protest has prescribed where the payment of the taxes was not made by December 31 of the

tax year. *Capital Drilling Co. v. Graves*, 496 So. 2d 487 (La. App. 1 Cir. 1986).

Plaintiff correctly asserts that the cases relied on by the exceptors involve taxpayer challenges to ad valorem taxes filed under La. R.S. 47:2110, the procedure for a nonadministrative challenge to an ad valorem tax. See, for instance, *Comm-Care Corporation v. Louisiana Tax Commission, et al.*, Docket No. 96/CA/0039, La. First Circuit Court of Appeal, September 27, 1996; and *Capital Drilling Company v. Graves, supra.* A case cited by the plaintiff - - *Comm-Care Corporation v. M. Bolivar Bishop*, 673 So. 2d 212 (La. App. 3rd Cir 1996), rehearing denied 5/30/96, writ application pending - - likewise deals with a proceeding filed under La. R.S. 47:2110. [This Court notes, however, that the First Circuit has recently declined to follow the rationale of that particular Third Circuit decision. See *Comm-Care v. La. Tax Commission, supra*, at p. 10.]

The Court is aware that this particular proceeding is not brought under La. R.S. 47:2110 (as are the cited cases) but comes before this Court under the authority of a different statute, La.R.S. 47:1998 A. (1).

The Court finds only one case involving prescription under La. R.S. 47:1989 D involving appeals from a Tax Commission decision. *Rickey Tri-Key Partnership v. Dupleix*, 462 So. 2d 235 (La. App. 3rd Cir. 1984), writ denied (1985). In *Rickey*, the taxpayer paid its 1982 taxes under protest on January 27, 1983 and the Tax Commission decision adverse to the taxpayer was rendered on April 22, 1983. Suit was thereafter filed for review of that decision within 30 days thereafter on May 23, 1983. The Third Circuit held that

La. "R.S. 47:1998 A expressly gives appelant the right to contest an adverse decision of the Tax Commission in district court within thirty days of that decision." *Rickey*, p. 236. The Third Circuit apparently felt that the timely filing of suit was all that was required to preserve the taxpayer's right to seek judicial review despite the fact that the taxes where paid on January 22, 1993, after the due date of December 31, 1982 of the tax year. Writs were denied by the Louisiana Supreme Court. The Court notes, however, that the late payment of the taxes was not made issue in that case.

Exceptors cite First Circuit decisions determining prescription under La. R.S. 47:2110, which do make references (dicta only) to proceedings brought under La. R.S. 47:1998. See *Comm-Care Corporation v. La. Tax Commission, supra.*, p. 8-9 of slip opinion, citing *Capital Drilling Co. v. Graves, supra.*, for the proposition that "La. R.S. 47:1998(A) requires timely payment by a taxpayer choosing to challenge the correctness of an assessment." See, particularly, *Capital Drilling Co., at p. 492:*

> *Thus, if the taxpayer had chosen to correct the correctness of the assessment pursuant to the procedure required by La. Const. of 1974, Art. VII,* §18E, it nevertheless would have been required to timely pay the taxes under protest. La. R.S. 47:1998(A).

Exceptors contend that the payment of the tax after the due date defeats the taxpayer's right to a review of the Tax Commission decision, analogizing the situation to the First Circuit's treatment of the §2110 cases cited above and relying on the dicta set out in those cases regarding §1998 situations. This Court must determine here whether the taxes must be paid under protest by December 31 of the tax year

in order to preserve the taxpayer's right to judicial review. No other court has specifically ruled on this issue.

The plaintiff argues this §1998 cause of action is separate and distinct from a §2110 cause of action. It further argues that a §1998 case affords a taxpayer a right to appeal a decision of the Tax Commission to the district court *only* after the Commission has ruled. It argues that its appeal to this Court within thirty days was, therefore, timely. It further argues that payment under protest of the taxes prior to the Tax Commission decision would have divested the Commission of jurisdiction to render any decision at all, citing La. R.S. 47:1990. This Court, however, does not agree with that interpretation of that statute, particularly in cases regulated by the appeal procedure set forth in La. R.S. 47:1992 et seq, as utilized by petitioner here.

The First Circuit has consistently, continually, and recently held that taxes "paid under protest" must be paid prior to becoming delinquent and that taxes paid after the due date of December 31 of the tax year are delinquent taxes, defeating a claim for recovery of delinquent taxes paid under protest under §2110. See *Comm-Care Corporation v. La. Tax Commission, supra.*

Plaintiff's argument is essentially that La. R.S. 47:1998 A (2) allows a taxpayer to await the Tax Commission decision before payment under protest is required. In many cases, the issue would never arise were the Tax Commission decision is rendered before the end of the tax year. Here, however, the Tax Commission was rendered after the taxes became delinquent.

This Court can not ignore the construction of the term "due" adopted by the First Circuit in the recent *Comm-Care* decision. That decision delineates between taxes that are "due" and taxes that are "delinquent." Therefore, the taxes paid in this matter were not *due* but were *delinquent* when paid. No where does the administrative scheme provide that a taxpayer's use of the administrative appeal procedure operates as a stay or suspension of the obligation to pay a tax timely by December 31 of the tax year. In determining whether any particular statute specifically requires that taxes must be paid prior to December 31 to preserve the right to seek judicial review of the Tax Commission decision, the provisions of La. R.S. 47:1998 A (2) must be considered:

> Any taxpayer who has filed suit under these provision [La. R.S. 47:1998 A] and whose taxes have become due shall pay such taxes *under protest* . . .

The only statute dealing with payment under protest in the context of ad valorem taxes is La. R.S. 47:2110. The First Circuit has held that the right to recover taxes paid under protest has prescribed where the taxes were not paid by December 31.

Accordingly, this Court feels constrained to hold that two requirements must be met in order to preserve the right to judicial review of the Tax Commission decision: (1) suit must be filed within thirty days of the decision; and (2) the taxes must be paid under protest. According to the First Circuit line of cases, payment under protest must be made before December 31 of the tax year; and there exists no right to pay delinquent taxes under protest. Because the plaintiff has

failed to *timely* satisfy the second requirement, this Court must find that its suit has prescribed. In line with the First Circuit decisions on the §2110 cases regarding payment under protest, the decision cannot be otherwise.

Accordingly, this suit for judicial review has prescribed. The exception of prescription will be maintained; and petitioner's suit will be dismissed with prejudice at petitioner's cost.

NO CAUSE OF ACTION

In light of this Court's ruling on the exception of prescription, the exception of no cause of action need not be decided.

Judgment will be signed upon presentation in conformity with these written reasons.

Baton Rouge, Louisiana, this *9th* day of *October*, 1996.

/s/ Celia R. Cangelosi

Celia R. Cangelosi, Judge
19th Judicial District Court

FILED OCT 9 1996

/s/ Mathilda S Nolan

DY. CLERK OF COURT

I hereby certify that on this day a copy of the written reasons for Judgment was mailed by me, with sufficient postage affixed to : Illegible, McKane, Illegible, _____
Done and signed on *10-10-96*

M. Nolan

Deputy Clerk of Court

APPENDIX 3

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT
97 CA 0555

COMM-CARE CORPORATION

VERSUS

LOUISIANA TAX COMMISSION, ET AL

JUDGMENT RENDERED: *April 8, 1998*

* * * * * *

ON APPEAL FROM THE
NINETEENTH JUDICIAL DISTRICT COURT
(NUMBER 425,365), PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA

HONORABLE CELIA R. CANGELOSI, JUDGE

* * * * * *

John A. Stassi, II
New Orleans, Louisiana

Counsel for
Plaintiff/Appellant,
Comm-Care Corporation

Paul S. West
Baton Rouge, Louisiana

Troy C. Tillman
Leesville, Louisiana

Counsel for
Defendants/Appellees,
Louisiana Tax Commission,
et al.

* * * * *

BEFORE CONZALES, PARRO AND GUIDRY, JJ.

GONZALES, J.

This is an appeal by a taxpayer from a judgment granting an exception of prescription in favor of several parish tax assessors.

FACTS AND PROCEDURAL HISTORY

Comm-Care Corporation (Comm-Care), an entity recognized as a tax-exempt organization by the United States Internal Revenue Service, is the owner and operator of ten nursing homes in nine parishes in Louisiana. Comm-Care sought exemption from 1995 ad valorem taxes with the respective tax assessors in the parishes where its nursing homes are located. The parish tax assessors denied Comm-Care's requests, and Comm-Care administratively appealed to the respective parish boards of review, pursuant to La. R.S. 47:1992(C). All parish boards of review affirmed the assessors' decisions, and Comm-Care appealed to the Louisiana Tax Commission (Tax Commission), pursuant to La. R.S. 47:1992(D).

In February of 1996, the Tax Commission held a hearing on the matter and subsequently determined that Comm-Care was not exempt from paying the 1995 ad valorem taxes. On February 13, 1996, Comm-Care paid the taxes under protest, and on February 27, 1996, filed a petition for judicial review of the Tax Commission's decision in the trial court, pursuant to La. R.S. 47:1998(A)(1), naming the Tax Commission, the parish tax assessors, and the sheriffs of the respective parishes as defendants.

The assessors therafter filed exceptions of no cause of

action and prescription. In support of their exception of prescription, the assessors argued tha Comm-Care's payment of the 1995 ad valorem taxes in 1996 was untimely, and to preserve its right to challenge the Tax Commission's decision, Comm-Care was required to have paid the taxes in 1995, the calendar year in which the taxes were due. On May 6, 1996, the trial court held a hearing on the exceptions, and on October 17, 1996, signed a judgment granting the assessors' exception of prescription and dismissing Comm-Care's petition with prejudice. From this adverse judgment,Comm-Care appeals.

DISCUSSION

This court has previously held that, in order to maintain a taxpayer challenge to an ad valorem tax under La. R.S. 47:2110, a taxpayer must have paid the tax under protest in the calendar year in which the tax was due. *Comm-Care Corporation v. Louisiana Tax Commission*, 96-0039 (La. App. 1st Cir. 9/27/96), 681 So.2d 1001, *aff'd. on other grounds, sub nom, Comm-Care Corporation v. Bishop*, 96-1711 (La. 1/21/98), ____ So.2d ____, 1998 WL 23173 *on rehearing*); *Capital Drilling Company v. Graves*, 496 So.2d 487(La. App. 1st Cir. 1986).

In granting the assessors' exception of prescription herein, the trial court determined that the rationale of the above cases applied equally to a taxpayer's challenge to an ad valorem tax under the administrative procedure provided in La. R.S. 47-1992, 1989, and 1998. After a thorough review of the record and prior jurisprudence, we find no error in the trial court's judgment. We reach this conclusion without deciding whether the trial court properly granted the

assessors' exception of prescription, or if instead, the case should have been dismissed for Comm-Care Corporation's failure to state a cause of action or a right of action. *See Comm-Care Corporation v. Bishop*,96-1711 (La. 1/21/98), ____ So.2d ____, 1998 WL 23173 (*on rehearing*).

DECREE

For the foregoing reasons, the October 17, 1996 judgment of the trial court, dismissing Comm-Care's petition with prejudice, is **AFFIRMED**. Costs of this appeal are assessed to Comm-Care Corporation.

APPENDIX 4

THE SUPREME COURT
OF THE STATE OF LOUISIANA

COMM-CARE CORPORATION

VS. NO. 98-C - 1216

LOUISIANA TAX COMMISSIION, ET AL.

June 19, 1998

Denied.

WFM
PFC
CDK
BJJ
JPV
CDT
JTR

LEMMON, J. not on panel.

Supreme Court of Louisiana
June 19, 1998

/s/ Illegible
Clerk of Court
for the Court

APPENDIX 5

§ 2110. Suits to recover taxes paid under protest

A. No court of this state shall issue any process whatsoever to restrain the collection of an ad valorem tax imposed by the state, or by any political subdivision thereof, under authority granted to it by the legislature or by the constitution. Any person resisting the payment of any amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give him and the officer or agency that has given rise to the cause of action notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If suit is filed within such time for the recovery of the tax, then that portion of the taxes paid that are in dispute shall be deemed as paid under protest and such amount shall be segregated and shall be further held pending the outcome of the suit. That portion of the taxes paid by the taxpayer to the officer which is not in dispute shall not be made subject to the protest. If the taxpayer prevails, the officer shall refund the amount to the taxpayer with interest at the actual rate earned on the money paid under protest in the escrow account during the period from the date such funds were received by the officer to the date of such refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes together with interest at the rate set forth above during the period from the date the notice of intention to file suit for recovery of taxes was given to the officer until the

date such taxes are paid.

B. The right to sue for recovery of a tax paid under protest as provided herein shall afford a legal remedy and right of action in any state or federal court having jurisdiction of the parties and subject matter for a full and complete adjudication of any and all questions arising in the enforcement of such right respecting the legality of any tax accrued or accruing or the method of enforcement thereof. In any such suit, service of process upon the officer or agency designated and provided for in R.S. 47:1998(A)(2) or (B)(3) or Subsection A of this Section shall be required.

C. The right to sue for recovery of a tax paid under protest as provided herein shall afford a legal remedy and right of action at law in the state or federal courts where any tax or the collection thereof is claimed to be an unlawful burden upon interstate commerce, or in violation of any act of the Congress of the United States, the Constitution of the United States, or the constitution of the state. Upon request of a taxpayer and upon proper showing by such taxpayer that the principle of law involved in an additional assessment is already pending before the courts for judicial determination, the taxpayer, upon agreement to abide by the pending decision of the courts, may pay the additional assessment under protest but need not file an additional suit. in such cases the tax so paid under protest shall be segregated and held by the officer designated by law for the collection of such tax until the question of law involved has been determined by the courts and shall then be disposed of as provided in the decision therein.

D. An assessment valuation shall be challenged only

pursuant to the method or procedures as provided first in R.S. 47:1992, then R.S. 47:1989, and finally R.S. 47:1998.

E. Any taxpayer in the state who has paid his taxes under protest as provided herein and who has filed suit under the provisions of R.S. 47:1856, R.S. 47:1857, or R.S. 47:1998, shall cause to issue in said suit notice to the officer or officers designated for the collection of said taxes in the parish or parishes where the property is located, and such notice shall be sufficient to cause said officer or officers to further hold said amount segregated pending the outcome of the suit.

APPENDIX 6

§ 2101. *Time for payment; notice when due*

A. (1) All taxes shall be collected in the calendar year in which the assessment thereof is made, and they shall be designated as the "taxes for the year ____", accordingly as they are collectible, and the taxes assessed in each year shall be due in that calendar year as soon as the tax roll is filed in the office of the recorder of mortgages, except taxes on movable property in the event of a bulk sale under the provisions of the Bulk Sales Law,[1] and they shall be paid on or before the thirty-first day of December in each respective year in order to avoid the notice, advertisement, and sale required by Article VII, Section 25 of the Louisiana Constitution. In the event of a bulk sale of movable property under the provisions of the Bulk Sales Law, all taxes due on movable property shall be due ten days prior to completion of the tansfer or the payment of any consideration therefor and shall be payable upon completion of the bulk sale.

(2) No forced collection of taxes on movable property shall be made before the first day of February of the succeeding year unless the collector has good reason to believe that the state, parish, or municipal corporation will lose the collection.

(3) The interest on all ad valorem taxes, whether levied on movable or immovable property, which are delinquent shall begin on the thirty-first day of December of each and every year and shall bear interest from December thirty-first of such year until paid, at the rate of one percent per month or any part therof. In the event of an erroneous assessment

and adjustment by the tax commission, the taxpayer shall have fifteen days from receipt of notice of the revised assessment in which to pay the adjusted amount without interest penalty. If the address provided by the tax assessor on the tax roll proves to be incorrect and the tax debtor does not receive a timely notice, the tax collector may extend to the debtor a fifteen-day notice in which to pay without interest penalty.

B. (1) Immediately following the filing of the tax roll by the assessor in each calendar year, the tax collector with whom such tax roll is filed shall mail a notice in addition to the notices required elsewhere in this Title, by postcard or letter, to each tax debtor listed on the tax roll at the address shown on such roll. This notice shall disclose the total amount of taxes due by the tax debtor for the current year, the ward in which the property taxed is located, and the number of the assessment.

(2) In addition to the notice to the tax debtor, the tax collector shall also send a notice to each person holding a properly recorded mortgage on immovable propery if such mortgagee has notified the tax collector of such recorded mortgage and has requested the notice of taxes due. If the mortgagee has designated another person to receive the notice, the tax collector shall send a notice of taxes due to that person. The notification by the mortgagee to the tax collector shall state the legal description of the immovable property and the name of the record owner. The mortgagee requesting notice shall pay a reasonable sum to the sheriff to defray the cost of providing the notice. The notification by the mortgagee to the tax collector shall be renewed annually. The notice to the mortgagee may be in the form of a computer printout.

C. the notice shall request the tax debtor to return the notice to the tax collector with remittance, and shall remind the tax debtor of the date that taxes become delinquent following issuance of such notice and that interest will accrue on the taxes from and after the date the taxes become delinquent. Interest shall accrue at the rate prescribed by law, which rate, or a brief description of the manner in which the rate is calculated, shall be stated in the notice.

D. Failure of the collector to send this notice or failure of the taxpayer assessed to receive the notice shall not affect any sale for taxes of any of the property assessed upon which the taxes are not paid.

E. The provisions of this Section requiring a notice to the taxpayer shall in no way affect and shall not be held to be inconsistent or in conflict with the provisions of R.S. 47-2171, 47:2180, 47:2181, or 47:2189, or any other Section relating to notice to tax debtors.

APPENDIX 7

§ 1992. Inspection of assessment lists: notification and review of assessments by board or review, hearing officers

A. (1) After each assessor has prepared and made up the lists showing the assessment of immovable and movable property in and for his parish or district, his lists shall be exposed daily for inspection by the taxpayers and other interested persons for the period provided for in Subsection G of this Section. Each assessor shall give notice of such exposure for inspection in accordance with rules and regulations established by the Louisiana Tax Commission.

(2) A property owner or authorized agent of the property owner may make a written request for notice of the current year's assessment of the property of which he is the owner; however, such request shall be made no sooner than the first day of June of that year, and such request shall be received by the assessor of the parish or district in which the property is located no later than June fifteenth of that same year. The authorized agent of the taxpayer shall provide with the request for the assessment, written authorization from the taxpayer for that agent to act as the authorized agent of the taxpayer in the request of the notice of an assessment. The property owner shall provide to the assessor at the time of the mailing of the notice, appropriate means for the return of the notice such as a self-addressed stamped envelope of sufficient size and adequate postage to hold the notice requested. The assessor, at no cost to him, shall deliver to the property owner through the means provided by the proper-

ty owner a written notice of the assessed value of the property no later than the close of business on the third day for inspection of the assessment lists as provided for in Subsections F and G of this Section. However, the failure to provide the written notice provided in this Paragraph shall not result in any extension of time for an appeal of assessment.

B. After the lists of each assessor have been exposed for inspection for the period provided for in Subsection G of this Section, the lists as changed by each assessor shall be certified to the board of review within three days, which board shall conduct public hearings for all persons or their representatives desiring to be heard on the assessments of immovable and movable property. Notice of such public hearings shall be given by each assessor in accordance with rules and regulations established by the tax commission.

C. The board of review shall consider the written or oral complaint of any person desiring to be heard who has timely filed the report or reports as required by Chapter 6 of Subtitle III of Title 47, R.S. 47:2301 et seq., and who has provided to the board of review at least seven days prior notice either through appearing in person at the board of review's office or by filing such complaint by means of certified mail. Contrary provisions of law notwithstanding, the written or oral complaint of any bona fide representative of an affected tax recipient body shall be considered by the board of review provided such representative has provided at last seven days prior notice to the board in the manner provided in this Section and has furnished the owner's name and address, a description of each property contested, and the assessment number of each property contested; nothing contained herein

shall be construed to authorize a tax recipient body to challenge the assessment of all property within its taxing jurisdiction in a single complaint. The validity of each assessment shall be determined on its own merits using recognized appraisal techniques. The board of review may make a determination to increase or decrease the assessment of immovable or movable property made by the assessor in accordance with the fair market or use valuation determined by the board.

D. All determinations by the board of review shall be final unless appealed to the tax commission. Any taxpayer or assessor dissatisfied with the determination of the board of review may appeal to the tax commission in accordance with rules and regulations established by the tax commission.

E. On the fifteenth day after the board of review shall have commenced the public hearings as provided herein, the assessment lists, together with any changes in connection therewith, shall be certified and sent to the tax commission within three days.

F. In Orleans Parish, the procedure for review of assessments shall be as follows:

(1) Each assessor shall prepare and make up the lists showing the assessment of immovable and movable property in and for his district; the lists shall be exposed daily, except Saturday, Sunday, and legal holidays for inspection by the taxpayers and other interested persons during the period August first through August fifteenth of each year unless August fifteenth falls on a weekend or a legal holiday, when the period shall extend until the next business day. Each

assessor shall give notice of such exposure for inspection in accordance with rules and regulations established by the Louisiana Tax Commission. On or before the tenth business day after August fifteenth, the assessors shall certify their rolls to the board of review.

(2) The board of review shall consider all written complaints which have been filed in compliance with the following procedure:

(a) The complaint form provided by the board, through the office of the assessor, must be completed in conformity with the requirements of the board of review.

(b) The complaint form must be received in the assessor's office within three business days after August fifteenth.

(c) The form must be forwarded by the assessor and received by the board of review within seven business days after August fifteenth.

(d) The taxpayer must have timely filed the reports as required by R.S. 47:2301 et seq. and R.S. 47:2321 et seq.

(3) The board of review shall convene hearings on or before September fifteenth. The board may create one or more hearing officers, any one of whom shall be a member of the board of review and who may conduct all required public hearings of the board with or without the presence of the other members, provided that no final action may be taken by such board of review unless a quorum is present. The board may make a determination to increase or decrease the assess-

ment of real or personal property made by the assessor in accordance with the fair market or use valuation determined by the board.

(4) The board of review shall certify the assessment list to the Louisiana Tax Commission on or before October twentieth of each year.

G. The period for inspection of the assessment lists as provided for in this Section in each parish, except Orleans, shall, for the tax year beginning 1990 and in every tax year thereafter, for a period of fifteen days, beginning no earlier than August 15 and ending no later than September 15.

APPENDIX 8

§ 1998. Judicial review, generally

A. (1) Any taxpayer or bona fide representative of an affected tax-recipient body in the state dissatisfied with the action of the tax commission under the provisions of R.S. 47:1989, shall have the right to institute suit within thirty days of the decision of the tax commission in either the district court for the parish where the tax commission is domiciled or the district court of the parish where the property is located contesting the correctness of assessment. Any taxpayer who owns property assessed in more than one parish may institute this suit in either the district court for the parish where the tax commission is domiciled or the district court of any one of the parishes in which the property is located and assessed, provided at least twenty-five percent of the parishes where the property is located are named in the suit. However, if at least twenty-five percent of the parishes are not named in the suit, then suit must be filed in the parish where the property is located.

(2) Any taxpayer who has filed suit under this provision and whose taxes have become due shall pay such taxes under protest and shall cause to issue notice to the officer designated by law for the collection of such tax under the provisions of R.S. 47:2110(E), and shall cause service of process to be made on the Louisiana Tax Commission as the officer designated by law to assess the property as provided for in R.S. 47:2110(B). However, the portion of taxes that is not in dispute shall be paid without being made subject to the protest.

B. (1) Any taxpayer or bona fide representative of an affected tax- recipient body in the state shall have the right to institute suit in either the district court for the parish where the tax commission is domiciled or the district court of the parish where the property is located, for the purpose of contesting the correctness or legality of any change in assessment made against the property under written instructions of the tax commission, pursuant to R.S. 47:1990, which suits must be instituted within thirty days after the date of the written instructions of the tax commission ordering the change.

(2) Any taxpayer who owns property assessed in more than one parish may institute this suit in either the district court for the parish where the tax commission is domiciled or the district court of any one of the parishes in which the property is located and assessed provided at least twenty-five percent of the parishes where the property is located are named in the suit. However, if at least twenty-five percent of the parishes are not named in the suit, then suit must be filed in the parish where the property is located.

(3) Any taxpayer in the state who has filed suit under these provisions and whose taxes have become due shall pay said taxes under protest and shall cause to issue a notice to the officer designated by law for the collection of such tax under the provisions of R.S. 47:2110(E), and shall cause service of process to be made on the Louisiana Tax Commission as provided for in R.S. 47:2110(B). However, the portion of taxes that is not in dispute shall be paid without being made subject to the protest.

C. The assessor shall bring suit, when necessary to protect the interest of the state, and shall also have the right of appeal and such proceedings shall be without cost to him or the state.

D. In all suits relating to property taxes the judge shall hear and try such cases without delay, in chambers if necessary, without cost to the reviewers or the assessors.

E. The plea of estoppel shall never be allowed by the courts of this state in matters of local or municipal assessments where there are radical defects in the proceedings leading up to such local assessments, but such plea shall have full effect as against mere subsequent irregularities or informalities therein where no protest has been made thereto, provided that nothing contained in this Subsection shall apply to the levying of taxes for the security of any issuance of bonds.

F. If the assessed valuation finally determined under this Section is greater than the taxpayer's own assessed valuation, the court shall enter judgment against the taxpayer for the additional taxes due together with interest at the actual rate earned on the money paid under protest in the escrow account during the period from the date of notice of intention to file suit for recovery of taxes pursuant to R.S. 47:2110(E) until paid. If the taxpayer prevails in his suit to recover taxes paid under protest, the appropriate amount of taxes shall be refunded to the taxpayer together with interest at the rate set forth above during the period from the date of payment until the date of such refund.

APPENDIX 9

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 97/CA/0555

COMM-CARE CORPORATION

VERSUS

LOUISIANA TAX COMMISSION, et al

ORIGINAL BRIEF ON BEHALF OF APPELLANT COMM-CARE CORPORATION ON APPEAL FROM THE 19TH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE THE HONORABLE CELIA R. CANGELOSI, JUDGE DIVISION "M", CIVIL DOCKET NO. 425,365

JOHN A. STASSI II (Bar No. 12412)
SCOTT J. SONNIER (Bar No. 22633)
NICOLE R. RAMIREZ (Bar No. 23905
CHRISTSOVICH & KEARNEY, L.L.P.
SUITE 2300
PAN AMERICAN LIFE CENTER
601 POYDRAS STREET
NEW ORLEANS, LOUISIANA 70130

PAUL S. WEST (Bar No. 13375)
McGLINCHEY STAFFORD LANG
NINTH FLOOR, ONE AMERICAN PLACE
BATON ROUGE, LOUISIANA 70895
(504) 383-9000

ATTORNEYS FOR
COMM-CARE CORPORATION

CIVIL CASE

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STATEMENT OF THE CASE

Comm-Care Corporation ("Comm-Care") was organized on January 12, 1984. Article 2 of its Articles of Incorporation states:

> This corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes.

On May 16, 1984, the Internal Revenue Service determined that Comm-Care was organized for charitable, scientific and educational purposes, and therefore declared the corporation to be exempt from federal income taxes under §501(c)(3) of the Internal Revenue Code. On December 29, 1992, Comm-Care adopted amended and restated Articles of Incorporation. Article 2 of the amended Articles of Incorporation states:

> This corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes.

On April 15, 1993, the Internal Revenue Service determined that Comm-Care under its amended articles remained exempt under Code §501(c)(3), and that Comm-Care's proposed acquisition and operation of ten nursing homes in Louisiana were consistent with its charitable exempt purposes.

On March 1, 1994, in keeping with the Service's ruling letter, Comm-Care bought ten nursing-home facilities (the

"Facilities") located in nine parishes in Louisiana.[1]

For 1995 ad valorem tax purposes, Comm-Care timely filed renditions with the assessors claiming the Facilities to be exempt under Article VII, Section 21B(1)(a)[2] of the Louisiana Constitution of 1974. The assessors disallowed Comm-Care's claims for exemption, and Comm-Care timely filed Notice of Appeal with the respective parish Boards of Review, pursuant to La. R.S. 47:1992(C). All of the Boards of Review affirmed the decisions of the assessors, and Comm-Care timely appealed to the Tax Commission pursuant to La. R.S. 47:1992(D).

On February 13, 1996, following a hearing and the introduction of overwhelming and uncontroverted evidence, the Commission found that "Comm-Care Corporation is a non-profit corporation operated for health and welfare purposes, exempt from federal and state income taxation as required in the 1974 Constitution, Article VII, Section 21B(1)(a)" However, the Commission, despite its finding that Comm-Care satisfied the constitutional requirements, ruled that Comm-Care's Facilities were somehow not exempt from ad valorem taxation: "The Commission further finds that after reviewing all the evidence presented by the parties in the proceeding, that Comm-Care was not operating the nursing homes in a 'charitable' manner. The Commission further

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[1] The tax-exempt status of the Facilities for 1994 is the subject of a separate lawsuit presently before the Supreme Court. See footnote 6.

[2] Art. VII, section 21B(1)(a) provides for ad valorem tax exemption for the following Property owned by a non-profit corporation or association organized and operated exclusively for...charitable, health, welfare...purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax...

finds that the nursing homes appear to be operated in the same manner as any "for-profit" organization would operate."

Comm-Care paid the 1995 taxes under protest on February 13, 1996, the same day the Tax Commission rendereed its decision, and on February 27, 1996, within thirty (30) days of the Tax Commission's decision. Comm-Care filed its Petition for Judicial Review with the Nineteenth Judicial District Court pursuant to La. R.S. 47:1998.[3]

On October 17, 1996, Judge Celia R. Cangelosi of the 19th Judicial District for the Parish of East Baton Rouge maintained the defendants' exception of prescription on grounds that Comm-Care failed to pay the contested taxes when "due" (December 31, 1996,) and dismissed the appeal with prejudice at plaintiff's cost. A copy of the Judgment on Exceptions and the Written Reasons for Judgment are attached hereto as Exhibits A and B, respectively.

Plaintiff brought a devolutive appeal to this Court and applied for a writ of certiorari to the Supreme Court on the same grounds. The Supreme Court granted the writ and transferred the case to this Court, which declined to exercise supervisory jurisdiction over an appealable decision.

SPECIFICATION OF ERRORS

1. The trial court erred in maintaining defendants' exception of prescription because the statute under which this appeal of the Tax Commission's decision arises does not require that the subject taxes must be paid when "due."

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[3] Comm-Care also satisfied the requirement of La. R.S. 47:2110(E) by paying the taxes under protest and filing suit within thirty days.

2. The trial court erred by reading La. R.S. 47:1998 in *pari materia* with La. R.S. 47:2110 and therby reading into La. R.S. 47:1998 its own interpretation of La. R.S. 47:2110, that an appeal to the District Court under La. R.S. 47:1998 will not lie if the subject taxes are not paid when "due" on December 31 of the tax year when it was impossible for Com-Care to pay the tax when "due" without divesting the Tax Commission of its jurisdiction before it decided the case before it.

3. The trial court erred by denying Comm-Care judicial review of the Tax Commission's decision in accordance with La. R.S. 47:1998, thereby violating Comm-Care's Due Process rights under the 14th Amendment to the United States Constitution.

ARGUMENT

A. THE TRIAL COURT ERRED IN MAINTAINING DEFENDANT'S EXCEPTION OF PRESCRIPTION BECAUSE THE STATUTE UNDER WHICH THIS CAUSE OF ACTION ARISES DOES NOT REQUIRE THAT THE SUBJECT TAXES MUST BE PAID.

La. R.S. 47:1989-1998 provide an administrative procedure for taxpayers to contest the *correctness* or the *legality* of ad valorem tax assessments. This process involves a protest to the assessor, an appearance before the local board of review, an appeal to the Louisiana Tax Commission, and a review by the District Court on a petition for appeal filed within thirty days of the Commission's decision.

La. R.S. 47:1998 provides:

> A. (1) Any taxpayer or bona fide representative of an affected tax-recipient body in the state dissatisfied with the action of the tax commission under the provisions of La. R.S. 47:1989 shall have the right to institute suit within thirty days of the decision of the tax commission in either the district court for the parish where the tax commission is domiciled or the district court of the parish where the property is located contesting the correctness of the assessment.
>
> * * * * * * * * * * * *
>
> (2) Any taxpayer who has filed suit under this provision and whose taxes have become due shall pay said taxes under protest and shall cause to issue notice to the officer designated by law for the collection of such tax under the provisions of La. R.S. 47:2110(E) *and shall cause service of process to be made on the Louisiana Tax Commission and the officer designated by law to assess the property as provided for in La. R.S. 47:2110(B).* However, the portion of taxes that is not in dispute shall be paid without being made subject to the protest. (Italicized language added by Acts 1995, No.272 §1, effective July 1, 1995.)

"[P]ayment 'under protest' is not required to contest ad valorem assessments by the administrative procedure, *see* La. R.S. 47:1992 but instead is only necessary when suit is filed in district court, either after the pursuance of administrative remedies, *see* La. R.S. 47:1998 (A)&(B), or when

a direct lawsuit attacking the validity of an assessment is filed in district court. *See* La. R.S. 47:2110(A)." *Rickey Tri-Key Partnership v. Dupleix*, 462 So. 2d 235, 238 (La. App. 3d Cir. 1984). *writ denied.* 464 So. 2d 1385 (La. 1985).

This is a §1998 case arising out of Comm-Care's contest of the 1995 assessments by the prescribed administrative procedure. Comm-Care filed renditions claiming exemption and appeared before the local boards of review requesting that its tax-exempt status be recognized and the subject properties be placed on the tax-exempt rolls. When the assessments were affirmed by the boards, Comm-Care appealed to the Tax Commission whose decision was not handed down until February 13, 1996, after the taxes had become "due." Comm-Care paid the taxes under protest the same day and filed its petition for review in the 19th Judicial District Court within thirty (30) days following the Tax Commission's decision. Comm-Care did not pay the taxes by December 31 while its appeal to the Tax Commission was still under advisement because the Tax Commission would have been divested of jurisdiction. La. R.S.47:1990 provides:

> "The tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation, not to exceed its actual cash value. **Such change or correction may be made by the tax commission at any time before the taxes levied have actually been paid." (Emphasis added).**

The defendant assessors filed an exception of prescription to Comm-Care's appeal to the District Court on the

grounds that the taxes had not been paid when "due". The trial court maintained the exception, relying on this Court's holdings in *Capital Drilling*[4] and *Comm-Care Corporation v. Louisiana Tax Commission*.[5] pending before the Supreme Court.[6]

The lower court decided that the word "due" in La. R.S. 47:1998 means that the taxes must be paid by December 31 of the tax year in order that an appeal from an adverse decision of the Tax Commission will lie. It is respectfully submitted, however, that this interpretation renders meaningless the overall scheme of La. R.S. 47:1989-1998 setting forth the process for the contest of assessments administratively. Under the trial Court's interpretation, the Tax Commission need never decide another case, only hold them under advisement past December 31. If the taxpayer pays "timely" the Tax Commission is divested of jurisdiction and the taxpayer is relegated solely to the La. R.S. 47:2110 remedy, a *de novo* suit for refund in the district court. If the taxpayer does not pay "timely," the case is over because its right to appeal under La. R.S. 47:1998 has prescribed.

B. THE TRIAL COURT ERRED IN READING LA. R. S. 47:1998 IN *PARI MATERIA* WITH LA. R.S. 47:2110.

The trial court erred in applying this Court's holding in

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[4] *Capital Drilling Company v. Graves*, 496 So.2d 487, (La. App. 1st Cir 1986).

[5] No. 96-0039 (La. App. 1st Cir. 9/27/96).

[6] Docket No. 96-C-1711 c/w 96-C-2455.

Comm-Care Corporation v. Louisiana Tax Commission, a case brought under §2110, to this case brought under §1998.

In *Churchill Farms, Inc. v. Louisiana Tax Commission*, 338 So.2d 963 (La. App. 4th Cir. 1976), the Tax Commission asserted that La. R. S. 47:2110 must be read in *pari materia* with La. R.S. 47:1998 to preclude *Churchhill* from bringing suit because it had failed to fulfill the prerequisite of filing a sworn list of property and its valuation pursuant to the condition precedent of La. R.S. 47:1998. *Churchill* paid its 1969 taxes under protest in 1971 over one and a half years after the taxes were due and filed suit within the requisite thirty (30) days. The issue of timely payment was not addressed; however, the suit was allowed and was ultimately successful. The Court reasoned that an action under La. R.S. 47:2110 is a separate right in no way dependant on La. R.S. 47:1998. *Id.* at 965. Thus, the La. R.S. 47:1998 condition precedent of filing a sworn list is not to be read by implication into La. R.S. 47:2110 as a prerequisite to a suit for refund.

By the same token, a condition of La. R. S. 47:2110 cannot be read into La. R.S. 47:1998 as a prerequisite to an appeal of a decision of the Tax Commission. As stated in *Churchill*, the rights of action of La. R.S. 47:1998 and La. R.S. 47:2110 create separate rights of action arising out of separate sets of circumstances not subject to the conditions or prerequisites of each other.

The district court's decision here is contrary to that of the Third Circuit in *Rickey Tri-Key Partnership v. Dupleix*, 462 So.2d 235, 236 (La. App. 3d Cir. 1985), *writ denied*, 464 So.2d 1385 (La. 1985), a §1998 case regarding property assessed for 1982, wherein the taxes were paid in January, 1983 while an appeal was pending before the Tax Commission,

following which the Tax Commission affirmed the assessment.[7] The taxpayer then appealed to the district court, within thirty (30) days of the decision, but more than (30) days after payment. The defendants excepted on the grounds that the suit was untimely because filed more than thirty days after payment. The Third Circuit held the suit was timely. It stated:

> La. R.S. 47:1998(A) expressly gives appellant the right to contest an adverse decision of the Tax Commission in district court within thirty days of that decision. *Rickey,* 462 So.2d. at 236.

The Court correctly differentiated between La. R.S. 47:2110, which requires that suit be filed within thirty (30) days of *payment* under protest, and La. R.S. 47:1998, which requires suit be filed within thirty (30) days of the Tax Commission's decision *Id.* at 236-237. In other words, the Third Circuit concluded that La.R.S. 47:1998 has only **one** prerequisite: the filing of suit within thirty (30) days of the *Tax Commission's decision* without regard to the date of payment.

Comm-Care filed its petition within the requisite thirty (30) days following the Tax Commission's decision, as required by La. R.S. 47:1998. The trial court has imposed additional prerequisites that are not found in the statute to deny Comm-Care's right to judicial review. Comm-Care satisfied the requirements of La. R.S. 47:1998, and cannot be precluded from seeking judicial review of the tax commission's adverse determination.

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[7] Evidently, the Tax Commission affirmed the assessment under La.R.S. 47:1990 when the taxes were paid.

C. THE TRIAL COURT ERRED BY MAINTAINING DEFENDANT'S EXCEPTION OF PRESCRIPTION IN A §1998 CASE WHEN IT WAS IMPOSSIBLE TO PAY THE TAXES WHEN "DUE" WITHOUT DIVESTING THE TAX COMMISSION OF ITS JURISDICTION.

Under the requirement imposed by the trial court, a taxpayer would be required to pay the tax at issue prior to a decision by the Tax Commission. This cannot have been intended by the legislature because payment during the pendency of the case before the Tax Commission divests the Tax Commission of jurisdiction over the case:

> The Tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation, not to exceed its actual cash value. **Such change or correction may be made by the tax commission at any time before the taxes levied have been paid.** La. R.S. 47:1990 (Emphasis added).

"According to the clear language of La. R.S. 47:1990 quoted above and a long line of previous Attorney General's opinions, it is the opinion of this office that the Louisiana Tax Commission is without authority to change or correct any assessment of property after the taxes levied pursuant to the assessments have actually been paid." Opinion 77-1475, 1976-77 La. Op. Atty. Gen. 316 (1977).

Thus the Tax Commission only has jurisdiction before the taxes are paid. An examination of the statutes shows that no payment of taxes during the administrative process is

required. To require payment of taxes before a final administrative decision would terminate the administrative process and relegate a taxpayer solely to a post-deprivation remedy.

D. THE TRIAL COURT ERRED BY DENYING COMM-CARE JUDICIAL REVIEW IN ACCORDANCE WITH LA. R.S. 47:1998 THEREBY DENYING IT DUE PROCESS OF LAW.

Imposition of a tax is a taking of property. Under the Fifth and Fourteenth Amendments to the United States Constitution, the power to tax is legally exerted only if, at some stage, the taxpayer is given an opportunity to contest illegal exactions in keeping with due process principles. *Central of Georgia R. Co. v. Wright,* 207 U.S. 127 (1907); *Mitchell v. M.T. Grant Company,* 416 U.S. 600 (1974).

Due process under the Fifth and Fourteenth Amendments require the states to provide a "clear and certain" remedy for aggrieved taxpayers to contest tax assessments. See *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco.* 496 U.S. 18, 36-36 (1990), citing *Iowa-Des Moines National Bank v. Bennett,* 284 U.S. 239 (1931); *Montana National Bank of Billings v. Yellowstone County,* 276 U.S. 499 (1928); *Carpenter v. Shaw,* 280 U.S. 363 (1930); *Ward v. Board of County Commissioners of Love County,* 253 U.S. 17 (1920); *Atchison, T. & S.F.R. Co. v. O'Connor,* 223 U.S. 280 (1912). Otherwise an unlawful tax exaction constitutes a deprivation of property without due process of law. A state may provide the requisite procedural safeguards either in the form of pre-deprivation relief, post-deprivation relief or both. *Reich v. Collins,* 115 S.Ct. 547 (1994).

The due process issue presented in this case is whether La.R.S. 47:1998, as interpreted and applied by the trial court, constitutes "clear and certain" pre-deprivation relief.

In *Carpenter v. Shaw,* U.S. 363 (1930), the Choctaw Indian Tribe avoided a distress sale by paying property taxes under protest. The Supreme Court of Oklahoma denied the Tribe's right to recover based on a provision of the state statute which allowed a refund suit only if the tax was paid timely.

The Supreme Court reversed its ruling and held that "a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment." *Carpenter* at 369.

The case at hand deals with a claim of exemption under the State's constitution, not a federal law. Nevertheless the holding in *Carpenter* is still applicable. "[W]hile it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of the law." *Brinkerhoff-Farris Trust & Savings Co. v. Hill,* 281 U.S. 673, 682 (1930).

"If a taxpayer proves his tax burden is onerous due either to an invalid law or unequal enforcement of a valid levy, the net result is the same and the compliant rises to constitutional magnitude in that there is a deprivation of property without due process of law." *Churchill, supra* at 965.

While the states are free to determine whether to provide a pre-deprivation remedy, a post-deprivation remedy, or both, the remedy or remedies it does provide must give

taxpayers "clear and certain" relief. *Reich v. Collins,* 115 S.Ct. 547, 550-551 (1994). Louisiana provides both remedies (1) the pre-deprivation administrative proceeding outlined in La. R.S. 47:1989-1998 and (2) the post-deprivation proceeding described in La.R.S. 47:2110.

Comm-Care chose to contest the 1995 assessments pursuant to what it thought was a "clear and certain" pre-deprivation remedy as provided by La.R.S. 1989-1998, and it complied with each and every requirement set forth in those sections, only to be told by the trial court that it had failed to comply with another requirement to be found by reading the statute in *pari materia* with others.[8] This is a clear denial of due process.

In *Reich v. Collins,* 115 S.Ct. 547 (1994), the Court examined the Georgia Supreme Court's application of Georgia's tax refund statute, which provides that "a taxpayer shall be refunded any and all taxes...which are determined to have been erroneously or illegally assessed...whether paid voluntarily or involuntarily." On *Reich's* first appeal, the Georgia Supreme Court construed the refund statute not to apply to "the situation where the law under which the taxes (were) assessed and collected is itself subsequently declared to be unconstitutional." On *Reich's* second appeal, the Georgia Supreme Court reasoned (1) that states may choose to provide pre-deprivation or post-deprivation remedy which *Reich* had failed to follow, therefore it was not a denial of due process to deny *Reich* relief under the State's post-deprivation statute.

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[8] Comm-Care had a right to rely on La.R.S. 47:1989-1998 as written. La. Civil Code Art. 1; *Johnson v. St. Paul Mercury Ins. Co.* 236 So.2d 216 (La. 1970); Tate, *Louisiana and the Civil Law,* 39 La.L.Rev. 727, 743 (1962).

The United States Supreme Court agreed that the states may provide one remedy or the other or both "so long as that scheme is clear and certain...(and the state may) reconfigure its remedial scheme over time...to fit its changing needs. . . *but what a State may not do, and what Georgia did here, is to reconfigure its scheme, unfairly, in mid-course to bait and switch, as some have described it. "Reich,* 115 S.Ct. 547 at 550.(emphasis added)

This "bait-and-switch" scheme is exactly the result of the trial court's strained interpretation of the statute. The sequence of sections culminating in La. R.S. 47:1998 is clearly designed by the legislature to provide for pre-deprivation relief. The trial court's interpretation of the statute adds an unwritten requirement and produces the same bait-and-switch result proscribed in *Reich.*

RULES OF STATUTORY INTERPRETATION:

According to the rules of statutory construction. "[W]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written." La. Civ. Code Art. 9. La.R.S. 47:1998 sets forth the procedure to contest a decision of the Louisiana Tax Commission. Nothing in the statute states that the taxes must be paid within the year for which they are due in order to pursue this remedy.

The legislative intent is to provide taxpayers an opportunity to achieve a resolution before being required to pay. In this context, La. R.S. 47:1998A(1) creates a cause of action for judicial review: it requires only that the petition be filed within thirty (30) days of the Tax Commission's

decision. La. R.S. 47:1998A(2) follows almost as an afterthought: If the taxpayer has filed a suit under A(1) and as of that point in time, the taxes have fallen due, they shall be paid to the proper officer (to prevent a tax sale) with notice as to the pendency of the suit. This provision is necessary because, unlike the federal system the legislature chose not to allow the taxes to remain unpaid pending an appeal but to provide instead that if, as of the time the appeal is filed, the taxes have fallen due, they are to be paid with notice of the suit's pendency. This comports with La. R.S. 47:1990, which states that the Tax Commission retains jurisdiction only so long as the taxes remain unpaid.

The statutory rules of construction require that statutes be strictly construed. "A well-established rule of statutory construction is that the courts will not impute meanings to statutes which will lead to absurd results or extend the statutes to situations which the Legislature never intended should be covered thereby." *Smith v. Town of Vinton*, 25 So.2d 237, 239 (La. 1946). "A statute should not be construed to defeat its purpose." *Kaufman v. State through the Department of Public Safety Drivers' License Division*, 286 So.2d 723, 725 (La. App. 1st Cir. 1973).

The rules of construction of tax statutes require that any doubt must be read in favor of the taxpayer. In *Godchaux Maison Blanche, Inc. v. Broussard*, 590 So.2d 1159 (La. 1991), the Supreme Court wrote: "In interpreting the statutes, we begin from the well-settled premise that taxing statutes must be strictly construed against the taxing authority." *Id.*, p. 1161, citing *Collector of Revenue v. Wells Fargo Leasing Corp.*, 393 So.2d 1244 (La. 1981). "Where a tax statute is susceptible of more than one reasonable interpretation, the construc-

tion less onerous to the taxpayer must be adopted." *Brown v. La.Nasa*, 152 So.2d 33, 36 (La. 1963).

As written. La. R.S. 47:1998 does not lead to absurd consequences or conflict with other ad valorem tax provisions. As interpreted by the trial court it clashes directly with La. R.S. 47:1990, which states that the Tax Commission is divested of jurisdiction if the tax is paid before its decision is reached, which is an absurd result.

CONCLUSION

La. R.S. 47:1998 was enacted to provide a "clear and meaningful" pre-deprivation remedy. It is clear and unambiguous and not subject to interpretation to read into it timely payment as an additonal requirement. For a court to do so constitutes a denial of due process.

Accordingly, it is respectfully submitted that this Court should reverse the decision of the trial court, thereby overruling all exceptions and allowing Comm-Care its day in court on the merits.

Respectfully submitted,

JOHN A. STASSI II (Bar No. 12412)
SCOTT J. SONNIER (Bar No. 22633)
NICOLE R. RAMIREZ (Bar No. 23905
CHRISTOVICH & KEARNEY, L.L.P.
Suite 2300
Pan American Life Center
601 Poudras Street
New Orleans, Louisiana 70130-6078
Telephone: (504) 561-5700

PAUL S. WEST (Bar No. 13375)
McGLINCHEY STAFFORD LANG
Ninth Floor, One American Place
Baton Rouge, Louisiana 70895
(504) 383-9000

Attorney's for Comm-Care Corporation

CERTIFICATE

This is to certify that a copy of the above and foregoing has been served upon counsel of record by depositing same in the United States Mail, postage prepaid this ____ Day of April, 1997, at New Orleans, Louisiana.

John A. Stassi II

APPENDIX 10

SUPREME COURT OF LOUISIANA

No.

98 C 1216

COMM—CARE CORPORATION

Plaintiff-Applicant

VERSUS

LOUISIANA TAX COMMISSION, and LEE J. THEVENOT, in his capacity as Assessor for the PARISH OF AVOYELLES; JEWETTE FARLEY, in her capacity as Assessor for the PARISH OF LINCOLN; ROY D. MILLER in his capacity as Assessor for the PARISH OF BEAUREGARD; GERALD McCRORY, JR. in his capacity as Assessor for the PARISH OF ASCENSION; EUGENE CAVANAUGH, in his capacity as Assessor for the PARISH OF VERNON; FRANK GRANGER, III, in his capacity as Assessor for the PARISH OF EAST BATON ROUGE; RALPH GILL, in his capacity as Assessor for the PARISH OF RAPIDES PARISH; CARMON WALKER, in her capacity as Assessor for the PARISH OF CATAHOULA; RICH BAILEY, in his capacity as Assessor for the PARISH OF QUACHITA; JOE TORN TRUNZLER, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF CATAHOULA; WILLIE WAYNE HOUCK, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF LINCOLN; WILLIAM

EARL HILTON, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF RAPIDES; FRANK A. HOWARD, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF VERNON; HAROLD L. TRIDICO, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF ASCENSION; WILLIAM BELT, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF AVOYELLES; M. BOLIVAR BISHOP, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF BEAUREGARD; ELMER LITCHFIELD, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF EAST BATON ROUGE; LAYMON GODWIN, in his capacity as Sheriff and Ex-Officio Tax Collector of the PARISH OF QUACHITA

Defendant-Respondent

ON APPLICATION FOR WRITS OF CERTIORARI OR REVIEW FROM THE NINETEENTH JUDICIAL DISTRICT COURT FOR THE PARISH OF EAST BATON ROUGE PARISH
THE HONORABLE CELIA R. CANGELOSI JUDGE DIVISION "M"
CIVIL DOCKET NO. 425,365 AND THE FIRST CIRCUIT COURT OF APPEAL 97/CA/0555

APPLICATION FOR WRITS OF CERTIORARI OR REVIEW

JOHN A. STASSI II (Bar No. 12412)
SCOTT J. SONNIER (Bar No. 22633)
CHRISTSOVICH & KEARNEY, L.L.P.
SUITE 2300
PAN AMERICAN LIFE CENTER
601 POYDRAS STREET
NEW ORLEANS, LOUISIANA
70130-6078
TELEPHONE: (504) 561-5700

ATTORNEYS FOR
COMM-CARE CORPORATION

CIVIL CASE

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WRIT GRANT CONSIDERATIONS

1.

The Court of Appeal decision herein affirming the lower court's sustaining of the exception of prescription conflicts with the decision of the Court of Appeal, Third Circuit, decision in *Rickey Tri-Key Partnership v. Dupleix*, 462 So. 2d 235, 238 (La. App. 3d Cir. 1984), *writ denied*, 464 So.2d 1385 (La. 1985) on the same legal issue as to when payment under protest of ad valorem taxes must be paid to preserve the right to file suit for their return, plus interest and costs.

2.

The Court of Appeal's erroneous interpretation of La.R.S. 47:1998 will cause material injustice and significantly affect the public interest by denying due process to generations of taxpayer who through lack of knowledge or unfortunate circumstances are unable to pay illegal taxes by December 31 of each year.

3.

The Court of Appeal has decided and sanctioned a lower court's decision of a significant issue of law which has not been, but should be, resolved by this Court.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this application for writ of certiorari or review under Louisiana Code of Civil Procedure Article 2166 in that this application arises from an

affirmance by the Court of Appeal, First Circuit, of the decision of the Nineteenth judicial Court sustaining a peremptory exception of prescription and dismissing Applicant's suit.

STATEMENT OF THE CASE

Comm-Care Corporation ("Comm-Care") was organized on January 12, 1984. Article 2 of its Articles of Incorporation states:

> This corporation is organized and shall be operated exclusively for charitable, scientific, and educational purposes.

On May 16, 1984, the Internal Revenue Service determined that Comm-Care was organized for charitable, scientific and educational purposes, and therfore declared the corporation to be exempt from federal income taxes under §501(c)(3) of the Internal Revenue Code. On December 29, 1992, Comm-Care adopted amended and restated Articles of Incorporation. Article 2 of the amended Articles of Incorporation states:

> This corporation is organized and shall be operated exclusively for charitable, scientific and educational purposes.

On April 15, 1993, the Internal Revenue Service determined tht Comm-Care under its amended articles remained exempt under Code §501(c)(3), and that Comm-Care's proposed acquisition and operation of ten nursing homes in Louisiana were consistent with its charitable, exempt purposes.

On March 1, 1994, in keeping with the Service's ruling letter, Comm-Care bought ten nursing-home facilities (the "Facilities") located in nine parishes in Louisiana.[1]

For 1995 ad valorem tax purposes, Comm-Care timely filed renditions with the assessors claiming the Facilities to be exempt under Article VII, Section 21B(1)(a)[3] of the Louisiana Constitution of 1974. The assessors disallowed Comm-Care's claims for exemption, and Comm-Care timely filed Notices of Appeal with the respective parish Boards of Review, pursuant to La. R.S. 47:1992(C). All of the Boards of Review affirmed the decisions of the assessors, and Comm-Care timely appealed to the Tax Commission pursuant to La. R.S. 47:1992(D).

On February 13, 1996, following a hearing and the introduction of overwhelming and uncontroverted evidence, the Commission found that "Comm-Care Corporation is a non-profit corporation operated for health and welfare purposes, exempt from federal and state income taxation as required in the 1974 Constitution, Article VII, Section 21B(1)(a)." However, the Commission, despite its finding that Comm-Care satisfied the constitutional requirements, ruled that Comm-Care's Facilities were somehow not exempt from ad valorem taxation: "The Commission further finds that after

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[1] The tax-exempt status of the Facilities for 1994 is the subject of a separate lawsuit presently before the Supreme Court. See footnote 6.

[2] Art. VII, section 21B(1)(a) provides for ad valorem tax exemption for the following: Property owned by a non-profit corporation or association organized and operated exclusively for...charitable, health, welfare...purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax...

reviewing all the evidence presented by the parties in the proceeding, that Comm-Care was not operating the nursing homes in a 'charitable' manner. The Commission further finds that the nursing homes appear to be operated in the same manner as any "for-profit" organization would operate."

Comm-Care paid the 1995 taxes under protest on February 13, 1996, the same day the Tax Commission rendered its decision, and on February 27, 1996, within thirty (30) days of the Tax Commission rendered its decision, and on Febrwuary 27, 1996, within thirty (30) days of the Tax Commission's decision, Comm-Care filed its Petition for Judicial Review with the Nineteenth Judicial District Court pursuant to La. R.S. 47:1998.[3]

On October 17, 1996, Judge Celia R. Cangelosi of the 19th Judicial District for the Parish of East Baton Rouge maintained the defendants' exception of prescription on grounds that Comm-Care failed to pay the contested taxes when "due" (December 31, 1996,) and dismissed the appeal with prejudice at plaintiff's cost. A copy of the Judgment on Exceptions and the Written Reasons for Judgment are attached hereto as Exhibits A and B, respectively.

On April 8, 1998 the Court of Appeal, First Circuit, affirmed the lower court's judgment as to the said exception of prescription.

ASSIGNMENT OF ERRORS

1. The trial court erred in maintaining defendants'

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[3] Comm-Care also satisfied the requirement of La. R.S. 47:2110(E) by paying the taxes under protest and filing suit within thirty days.

exception of prescription because the statute under which this appeal of the Tax Commission's decision arises does not require that the subject taxes must be paid when "due."

2. The trial court erred by reading La. R.S. 47:1998 in *pari materia* with La. R.S. 47:2110, and thereby reading into La. R.S. 47:1998 its own interpretation of La. R.S. 47:2110, that an appeal to the District Court under La. R.S. 47:1998 will not lie if the subject taxes are not paid when "due" on December 31 of the tax year, when it was impossible for Comm-Care to pay the tax when "due" without divesting the Tax Commission of its jurisdiction before it decided the case before it.

3. The trial court erred by denying Comm-Care judicial review of the Tax Commission's decision in accordance with La. R.S. 47:1998, thereby violating Comm-Care's Due process rights under the 14th Amendment to the United States constitution.

SUMMARAY OF THE ARGUMENT

La. R.S. 47:1998 was enacted to provide a "clear and meaningful' pre-deprivation remedy. It is clear and unambiguous and not subject to interpretation to read into it payment by December 31 as an additional requirement. For a court to do so constitutes a denial of due process.

ARGUMENT

A. THE TRIAL COURT ERRED IN MAINTAINING DEFENDANT'S EXCEPTION OF PRESCRIPTION BECAUSE THE STATUTE UNDER WHICH THIS CAUSE OF ACTION ARISES DOES NOT REQUIRE THAT THE SUBJECT TAXES MUST BE PAID BY DECEMBER 31.

La. R.S. 47:1989-1998 provide an administrative procedure for taxpayers to contest the *correctness* or the *legality* of ad valorem tax assessments. This process involves a protest to the assessor, an appearance before the local board of review, an appeal to the Louisiana Tax Commission, and a review by the District Court on a petition for appeal filed within thirty days of the Commission's decision.

La. R.S. 47:1998 provides:

> A. (1) Any taxpayer or bona fide representative of an affected tax-recipient body in the state dissatisfied with the action of the tax commission under the provisions of La. R.S. 47:1989, *shall have the right to institute suit within thirty days of the decision of the tax commission* in either the district court for the parish where the tax commission is domiciled or the district court of the parish where the property is located contesting the correctness of the assessment. (Emphasis added.)
>
> * * * * * * * * * * * *
>
> (2) Any taxpayer who has filed suit under this provision and whose taxes have become due shall pay said taxes under protest and shall cause to issue notice to the officer designated by law for the collection of such tax under the provisions of L.a R.S. 47:2110(E), and shall cause service of process to be made on the Louisiana Tax Commission and the officer designated by law to assess the property as provided for in La.R.S. 47:2110(B). However, the portion of taxes that is not in dispute shall be paid without being made subject to the protest.

"[P]ayment 'under protest' is not required to contest ad valorem assessments by the administrative procedure, *see* La. R.S. 47:1992, but instead is only necessary when suit is filed in district court, either after the pursuance of administrative remedies, *see* La. R.S. 47:1998(A)&(B), or when a direct lawsuit attacking the validity of an assessment is filed in district court. *See* La. R.S. 47:2110(A)." *Rickey Tri-Key Partnership v. Dupleix*, 462 So. 2d 235, 238 (La. App. 3d Cir. 1984), *writ denied*, 464 So.2d 1385 (La. 1985).

This is a §1998 case arising out of Comm-Care filed renditions claiming exemption and appeared before the local boards of review requesting that its tax-exempt status be recognized and the subject properties be placed on the tax-exempt rolls. When the assessments were affirmed by the boards of review, Comm-Care appealed to the Tax Commission, whose adverse decision was not handed down until February 13, 1996, after the taxes had become "due." Comm-Care paid the taxes under protest the same day and filed its petition for review in the 19th Judicial District Court within thirty (30) days following the Tax Commission's decision. Comm-Care did not pay the taxes by December 31 while its appeal to the Tax Commission was still under advisement, because the Tax Commission would have been divested of jurisdiction. La. R.S. 47:1990 provides:

> "The tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation, not to exceed its actual cash value. **Such change or correction may be made by the tax commission at any time before the taxes levied have actually been paid." (Emphasis added).**

The defendant assessors filed an exception of prescription to Comm-Care's appeal to the District Court on the grounds that the taxes had not been paid when "due". The trial court maintained the exception, relying on its holding in *Capital Drilling.*[4]

In this case, the district court decided that the word "due" in La. R.S. 47:1998 means that the taxes must be paid by December 31 of the tax year in order that an appeal from an adverse decision of the Tax Commission will lie. It is respectfully submitted, however, that this interpretation renders meaningless the overall scheme of La. R.S. 47:1989-1998 setting forth the process for the contest of assessments administratively. Under the trial Court's interpretation, the Tax Commission need never decide another case, only hold them under advisement past December 31. If the taxpayer pays "timely" the Tax Commission is divested of jurisdiction and the taxpayer is relegated solely to the La. R.S. 47:2110 remedy, a *de novo* suit for refund in the district court. If the taxpayer does not pay "timely," the case is over because its right to appeal under La. R.S. 47:1998 has prescribed.

B. THE TRIAL COURT ERRED IN READING, LA. R.S. 47:1998 IN *PARI MATERIA* WITH LA. R.S. 47:2110.

The trial court erred in applying this Court's holding in *Comm-Care Corporation v. Louisiana Tax Commission,* a case brought under §2110, to this case brought under §1998.

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[4] *Capital Drilling Company v. Graves,* 496 So.2d 487, (La. App. 1st Cir 1986).

In *Churchill Farms, Inc. v. Louisiana Tax Commission*, 338 So.2d 963 (La. App. 4th Cir. 1976), the Tax Commission asserted that La. R.S. 47:2110 must be read in *pari materia* with La. R.S. 47:1998 to preclude *Churchill* from bringing suit because it had failed to fulfill the prerequisite of filing a sworn list of property and its valuation pursuant to the condition precedent of La. R.S. 47:1998. *Churchill* paid its 1969 taxes under protest in 1971, over one and a half years after the taxes were due, and filed suit within the requisite thirty (30) days. The issue of timely payment was not addressed; however, the suit was allowed and was ultimately successful. The Court of Appeal reasoned that an action under La. R.S. 47:2110 is a separate right, in no way dependant on La. R.S. 47:1998. *Id.* at 965. Thus, the La. R.S. 47:1998 condition precedent of filing a sworn list is not to be read by implication into La. R.S. 47:2110 as a prerequisite to a suit for refund.

By the same token, a condition of La. R.S. 47:2110 cannot be read into La. R.S. 47:1998 as a prerequisite to an appeal of a decision of the Tax Commission. As stated in *Churchill*, the rights of action of La. R.S. 47:1998 and La. R.S. 47:2110 create separate rights of action arising out of separate sets of circumstances not subject to the conditions of prerequisites of each other.

The First Circuit's decision here is contrary to that of the Third Circuit in *Rickey Tri-Key Partnership v. Dupleix*, 462 So.2d 235, 236 (La. App. 3d Cir. 1985), *writ denied*, 464 So.2d 1385 (La. 1985), a §1998 case regarding property assessed for 1982, wherein the taxes were paid in January, 1983 while an appeal was pending before the Tax Commission, following which the Tax Commission affirmed the assess-

ment.[5] The taxpayer appealed to the district court within thirty (30) days of the Commission's decision, but more than (30) days after payment. The defendants excepted on the grounds that the suit was untimely because filed more than thirty days after payment. The Third Circuit held the suit was timely. It stated:

> La. R.S. 47:1998(A) expressly gives appellant the right to a contest an adverse dicision of the Tax Commission in district court within thirty days of that decision. *Rickey*, 462 So.2d at 236.

The Court correctly differentiated between La. R.S. 47:2110, which requires that suit be filed within thirty (30) days of *payment* under protest, and La. R.S. 47:1998, which requires suit be filed within thirty (30) days of the Tax Commission's decision. *Id.* at 236-237. In other words, the Third Circuit concluded that La.R.S. 47:1998 has only one prerequisite the filing of suit within thirty (30) days of the *Tax Commission's decision,* without regard to the date of payment.

Commm-Care filed its petition in this case within thirty (30) days following the Tax Commission's decision, as required by La. R.S. 47:1998. The court of Appeal has imposesd additional prerequisites that are not found in the statute to deny Comm-Care's right to judicial review. Comm-Care satisfied the requirements of La. R.S. 47:1998, and cannot be precluded from seeking judicial review of the tax commission's adverse determination.

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[5] Evidently, the Tax Commission affirmed the assessment under La. R.S. 47:1990 after the taxes were paid.

C. THE TRIAL COURT ERRED BY MAINTAINING DEFENDANT'S EXCEPTION OF PRESCRIPTION IN A §1998 CASE WHEN IT WAS IMPOSSIBLE TO PAY THE TAXES WHEN "DUE" WITHOUT DIVESTING THE TAX COMMISSION OF ITS JURISDICTION.

Under the requirement imposed by the trial court, a taxpayer would be required to pay the tax at issue prior to a decision by the Tax Commission. This cannot have been intended by the legislature because payment during the pendency of the case before the Tax Commission divests the Tax Commission of jurisdiction over the case:

> The tax commission may change or correct any and all assessments of property for the purpose of taxation, in order to make the assessments conform to the true and correct valuation, not to exceed its actual cash value. *Such change or correction may be made by the tax commission at any time before the taxes levied have been paid.* La.R.S. 47:1990 (Emphasis added).

"According to the clear language of La. R.S. 47:1990 quoted above and a long line of previous Attorney General's opinions, it is the opinion of this office that the Louisiana Tax Commission is without authority to change or correct any assessment of property after the taxes levied pursuant to the assessments have actually been paid. "Opinion 77-1475, 1976-77 La. Op. Atty. Gen. 316 (1977).

Thus the Tax Commission only has jurisdiction before the taxes are paid. An examination of the statutes shows that

no payment of taxes during the administrative process is required. To require payment of taxes before a final administrative decision would terminate the administrative process and relegate a taxpayer solely to a post-deprivation remedy.

D. THE TRIAL COURT ERRED BY DENYING COMM-CARE JUDICIAL REVIEW IN ACCORDANCE WITH LA. R. S. 47:1998 THEREBY DENYING IT DUE PROCESS OF LAW.

Imposition of a tax is a taking of property. Under the Fifth and Fourteenth Amendments to the United States Constitution, the power to tax is legally exerted only if, at some stage, the taxpayer is given an opportunity to contest illegal exactions in keeping with due process principles. *Central of Georgia R. Co. v. Wright,* 207 U.S. 127 (1907); *Mitchell v. M.T. Grant Company* 416 U.S. 600 (1974).

Due process under the Fifth and Fourteenth Amendments require the states to provide a "clear and certain" remedy for aggrieved taxpayers to contest tax assessments. See *McKesson Corp. v. Division of Alcoholic Beverages and Tobacco,* 496 U.S. 18, 36-36 (1990), citing *Iowa-Des Moines National Bank v. Bennet,* 284 U.S. 239 (1931); *Montana National Bank of Billings v. Yellowstone County,* 276 U.S. 499 (1928); *Carpenter v. Shaw,* 280 U.S. 363 (1930); *Ward v. Board of County Commissioners of Love County,* 253 U.S. 17 (1920); *Atchison, T. & S.F.R. Co. v. O'Connor,* 223 U.S. 280 (1912). Otherwise an unlawful tax exaction constitutes a deprivation of property without due process of law. A state may provide the requisite procedural safeguards either in the form of pre-deprivation relief, post-deprivation relief or both. *Reich v. Collins,* 115 S.Ct. 547 (1994).

The due process issue presented in this case is whether La.R.S. 47:1998, as interpreted and applied by the trial court, constitutes "clear and certain" pre-deprivation relief.

In *Carpenter v. Shaw*, 280 U.S. 363 (1930), the Choctaw Indian Tribe avoded a distress sale by paying property taxes under protest. The Supreme Court of Oklahoma denied the tribe's right to recover based on a provision of the state statute which allowed a refund suit only if the tax was paid timely.

The Supreme Court reversed its ruling and held that "a denial by a state court of a recovery of taxes exacted in violation of the laws or Constitution of the United States by compulsion is itself in contravention of the Fourteenth Amendment." *Carpenter* at 369.

The case at hand deals with a claim of exemption under the State's constitution, not a federal law. Nevertheless the holding in *Carpenter* is still applicable. "[W]hile it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of the law." *Brinkerhoff-FarisTrust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930).

"If a taxpayer proves his tax burden is onerous due either to an invalid law or unequal enforcement of a valid levy, the net result is the same and the complaint rises to constitutional magnitude in that there is a deprivation of property without due process of law." *Churchill, supra* at 965.

While the states are free to determine whether to provide a pre-deprivation remedy, a post-deprivation remedy,

or both, the remedy or remedies it does provide must give taxpayers "clear and certain" relief. *Reich v. Collins,* 115 S.Ct. 547, 550-551 (1994). Louisiana provides both remedies: (1) the pre-deprivation administrative proceeding outlined in La.R.S. 47:1989-1998 and (2) the post-deprivation proceeding described in La.R.S. 47:2110.

Comm-Care chose to contest the 1995 assessments pursuant to what on its face is a "clear and certain" pre-deprivation remedy as provided by La.R.S. 47:1989-1998, and it complied with each and every requirement set forth in those sections, only to be told by the Court of Appeal that it had failed to comply with another requirement to be found by reading the statute in *pari materia* with others.[6] This is a clear denial of due process.

In *Reich v. Collins,* 115 S.Ct. 547 (1994), the Court examined the Georgia Supeme Court's application of Georgia's tax refund statute, which provides that "a taxpayer shall be refunded any and all taxes ... which are determined to have been erroneously or illegally assessed ... whether paid voluntarily or involuntarily." On *Reich's* first appeal, the Georgia Supreme Court construed the refund statute not to apply to "the situation where the law under which the taxes (were) assessed and collected is itself subsequently declared to be unconstitutional." On *Reich's* second appeal, the Georgia Supreme Court reasoned (1) that states may choose to provide pre-deprivation or post-deprivation relief and (2) Georgia provided a satisfactory pre-deprivation remedy which *Reich* had failed to follow, therefore it was not a denial of due process to deny *Reich* relief under the State's post-deprivation statute.

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[6] Comm-Care had a right to rely on La.R.S. 47:1989-1998 as written, La. Civil Code Art. 1; *Johnson v. St. Paul Mercury Ins. Co.,* 236 So.2d 216 (La. 1970); Tate, *Louisiana and the Civil Law,* 39 La. L.Rev. 727, 743 (1962).

The United States Supreme Court agreed that the states may provide one remedy or the other or both "so long as that scheme is clear and certain ...(and the state may) reconfigure its remedial scheme over time, to fit its changing needs . . . *but what a State may not do, and what Georgia did here, is to reconfigure its scheme, unfairly, in mid-course to bait and switch, as some have described it.*" *Reich*, 115 S. Ct. 547 at 550, (emphasis added).

The "bait-and-switch" scheme is exactly the result of the trial court's strained interpretation of the statute. The sequence of sections culminating in La. R.S. 47:1998 is clearly designed by the legislature to provide for pre-deprivation relief. The trial court's interpretation of the statute adds an unwritten requirement and produces the same bait-and-switch result proscribed in *Reich*.

RULES OF STATUTORY INTERPRETATION:

According to the rules of statutory construction, "[W]hen a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written." La. Civ. Code Art 9. La. R.S. 47:1998 sets forth the procedure to contest a decision of the Louisiana Tax Commission. Nothing in the statute states that the taxes must be paid within the year for which they are due in order to pursue this remedy.

The legislative intent is to provide taxpayers an opportunity to achieve a resolution before being required to pay. In this context, La. R.S. 47:1998A(1) creates a cause of action for judicial review; it requires only that the petition be filed within thirty (30) days of the Tax Commission's decision. La. R.S. 47:1998A(2) follows almost as an afterthought:

If the taxpayer has filed a suit under A(1) and, as of that point in time, the taxes have fallen due, they shall be paid to the proper officer (to prevent a tax sale) with notice as to the pendency of the suit. This provision is necessary because, unlike the federal system, the legislature chose not to allow the taxes to remain unpaid pending an appeal but to provide instead that if, as of the time the appeal is filed, the taxes have fallen due, they are to be paid with notice of the suit's pendency. This comports with La. R.S. 47:1990, which states that the Tax Commission retains jurisdiction only so long as the taxes remain unpaid.

The statutory rules of construction require that statutes be strictly construed. "A well-established rule of statutory construction is that the courts will not impute meanings to statutes which will lead to absurd results or extend the statutes to situations which the Leglislature never intended should be covered thereby." *Smith v. Town of Vinton*, 25 So. 2d 237, 239 (La. 1946). "A statute should not be construed to defeat its purpose." *Kaufman v. State, through the Department of Public Safety Drivers' License Division*, 286 So.2d 723, 725 (La. App. 1st Cir. 1973).

The rules of construction of tax statutes require that any doubt must be read in favor of the taxpayer. In *Godchaux/Maison Blanche, Inc. v. Broussard*, 590 So.2d 1159 (La. 1991), the Supreme Court wrote: "In interpreting the statutes, we begin from the well-settled premise that taxing statutes must be strictly construed against the taxing authority." *Id.*, p. 1161, citing *Collector of Revenue v. Wells Fargo Leasing Corp.*, 393 So.2d 1244 (La. 1981). "Where a tax statute is susceptible of more than one reasonable interpretation, the construction less onerous to the taxpayer

must be adopted." *Brown v. LaNasa*, 152 So.2d 33, 36 (La. 1963).

As written, La.R.S. 47:1998 does not lead to absurd consequences or conflict with other ad valorem tax provisions. As interpreted by the trial court, it clashes directly with La. R.S. 47:1990 which states that the Tax Commission is divested of jurisdiction if the tax is paid before its decision is reached, which is an absurd result.

CONCLUSION

La. R.S. 47:1998 was enacted to provide a "clear and meaningful" pre-deprivation remedy. It is clear and unambiguous and not subject to interpretation to read into it timely payment as an additional requirement. For a court to do so constitutes a denial of due process.

Accordingly, it is respectfully submitted that this Court should reverse the decision of the trial court, thereby overruling all exceptions and allowing Comm-Care its day in court on the merits.

Respectfully submitted,

/s/ John A. Stassi II

JOHN A. STASSI II (Bar No. 12412)
SCOTT J. SONNIER (Bar No. 22633)
CHRISTOVICH & KEARNEY, L.L.P.
Suite 2300
Pan American Life Center
601 Poydras Street
New Orleans, Louisiana 70130-6078
Telephone: (504) 561-5700

PAUL S. WEST (Bar No. 13375)
McGLINCHEY STAFFORD LANG
Ninth Floor, One American Place
Baton Rouge, Louisiana 70895
(504) 383-9000

Attorneys for Comm-Care Corporation